ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.773 OF 2008
IN
SECOND APPEAL NO.1217 OF 2005

ALONGWITH

SECOND APPEAL NO. 1217 OF 2005

Mangala Krishna Shirgaonkar & Ors. ...Applicants.

Vs.

Saraswatibai Ganpati Gandhi & Ors. ...Respondents.

Mr.Sandesh Deshpande for the Applicants.

Ms.Anjali Helekar for the Respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 21st April, 2008

P.C.

. On 10th April, 2008, matter was adjourned for one week and now, today on board alongwith the Second Appeal.

2. This Civil Application is for condonation of two years and 51 days delay in filing the Civil Application and for setting aside the conditional order dated 13th January, 2006 that resulted into dismissal of the Second Appeal itself as Appellant failed to serve the other Respondents. The present

Application is absolutely vague with regard to the reasons basically sufficient reasons to revoke the conditional order, there is no reason whatsoever mentioned and or reflected in this Civil Application. In this background, as consented I heard the learned counsel appearing for the Applicants even on the merit of the matter.

3. The present Second Appeal is by the original Defendant. Both the Courts after considering the rival contentions as well as material placed on the record held that the Plaintiff proved his title and therefore entitled for possession of the suit land and mesne profits. The Appellate Court specifically further held that the Defendants i.e. Appellants failed to prove the title of the Suit property by adverse possession.

4. In the matter of adverse possession, heavy burden lies upon the present Appellants. In the present case the Registered Sale Deed is in favour of the Plaintiff. There is nothing to justify the case of adverse possession. The lower Appellate Court right in observing that such possession even if any of the defendants are of permissive nature. The defendants

themselves in their cross-examination have admitted that the cattle shed and bathroom are constructed in the Plaintiffs land.

5. In totality, therefore, as there is no merit in the present Appeal. In view of the clear concurrent findings given by the lower Appellate Court, I am not inclined to restore the Second Appeal. The Second Appeal as well as Civil Application are, therefore, rejected and are disposed of, accordingly.

6. Ad-interim relief so granted earlier, also stands vacated.

(ANOOP V. MOHTA, J.)